UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,961	02/25/2004	David R. Clark	555255012729	4125

7590 12/12/2007	**EXAMINER**
Paul E. Franz, Esq.	ADDY, ANTHONY S
Jones Day	
901 Lakeside Avenue/North Point	
Cleveland, OH 44114	

ART UNIT	PAPER NUMBER
2617	

MAIL DATE	DELIVERY MODE
12/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *15 October 2007*.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1, 4-6, 8, 9, 16 and 48-55* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1, 4-6, 8, 9, 16 and 48-55* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October

15, 2007 has been entered. New **claims 53-55** has been added. **Claims 1, 4-6, 8, 9,**

16 and **48-55** are pending in the present application.

Response to Arguments

2.   Applicant's arguments with respect to **claims 1, 4-6, 8, 9, 16** and **48-55** have

been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

3.   The text of those sections of Title 35, U.S. Code not included in this action can

be found in a prior Office action.

4.   Claims 1, 4-6, 8, 16-17, 48 and 53 are rejected under 35 U.S.C. 103(a) as being

unpatentable over **Vasudevan, U.S. Publication Number 20040192282 A1**

(hereinafter Vasudevan) and further in view of **O'Neill et al., U.S. Publication**

Number 2007/0169073 A1 (hereinafter O'Neill).

As to **claims 1** and **53**, Vasudevan discloses: A method of updating a mobile

device having a baseline configuration stored in a mobile device memory **(110)**

(paragraph 2), comprising: receiving at a mobile device resource requirements data for

an update from an update management computing device, the resource requirements

data including a memory size of update data associated with the update **(paragraph**

42); determining whether the mobile device has a minimum amount of available

memory in the mobile device memory to store the update data by comparing the

memory size of the update data to the minimum amount of available memory in the

mobile device memory **(paragraph 42)**; if the mobile device does not have the minimum

amount of available memory in the mobile device memory to store the update data, then

identifying stored mobile device data stored in the mobile device memory that may be

purged to make available the minimum amount of available memory in the mobile

device memory **(paragraph 47)**; transmitting from the mobile device to the update

management computing device update request data requesting update data

(paragraph 47); receiving at the mobile device the update data from the update

management computing device in response to the transmitted update request data

(paragraph 47).

However, Vasudevan fails to disclose updating the mobile device with the

received update data by: creating an updated mobile device configuration within the

available memory of the mobile device memory; and maintaining the baseline mobile

device configuration within the mobile device memory after creating the updated mobile

device configuration within the available memory of the mobile device memory, wherein

the baseline mobile device configuration is maintained within the mobile device memory

for a period of time sufficient to allow the updated mobile device configuration to be

tested. However, the Examiner contends this feature is very well known in the art as

taught for example by O'Neill.

In an analogous field of endeavor, O'Neill teaches a method of conducting over-

the-air (OTA) updates to firmware and software on a mobile device, comprising:

updating the mobile device with the received update data by: creating an updated

mobile device configuration within the available memory of the mobile device memory;

and maintaining the baseline mobile device configuration within the mobile device

memory after creating the updated mobile device configuration within the available

memory of the mobile device memory, wherein the baseline mobile device configuration

is maintained within the mobile device memory for a period of time sufficient to allow the

updated mobile device configuration to be tested **(see p. 4 [0031] and p. 5 [0038-

0039])**.

Therefore, it would have been obvious to one of ordinary skill in the art at the

time of the invention to modify Vasudevan with the teachings of O'Neill to include a

method of updating the mobile device with the received update data by: creating an

updated mobile device configuration within the available memory of the mobile device

memory; and maintaining the baseline mobile device configuration within the mobile

device memory after creating the updated mobile device configuration within the

available memory of the mobile device memory, wherein the baseline mobile device

configuration is maintained within the mobile device memory for a period of time

sufficient to allow the updated mobile device configuration to be tested, in order to

update an updateable mobile device from a current code version to a latest updated

code version, and verifying at the mobile device, to determine whether it received an

appropriate update package before applying the update package to the existing version

of firmware and/or software in the mobile device as per the teachings of O'Neill **(see p.**

2 [0012], p. 4 [0031] and p. 5 [0039]).

As to **claim 4**, Vasudevan in view of O'Neill teaches everything as applied in

claim 1 and Vasudevan also discloses: upon identifying stored mobile device data

stored in the mobile device memory that may be purged to make available the minimum

amount of available memory in the mobile device memory (paragraph 47): determining

whether the identified stored mobile device data is stored on a remote storage device

operable to communicate with the mobile device over a communication network

(paragraph 47); upon determining that the identified stored mobile device data is not

stored on the remote storage device, transmitting the identified stored mobile device

data to the remote storage device for storage (paragraph 47); and purging the identified

stored mobile device data from the mobile device memory (paragraph 47).

As to **claim 5**, Vasudevan in view of O'Neill teaches everything as applied in

claims 1 and 4 and Vasudevan also discloses: updating the mobile device with the

received update data (paragraph 42); transmitting a request from the mobile device to

the remote storage device for transmission of the identified stored mobile device data

from the remote storage device to the mobile device (paragraph 43); receiving the

identified stored mobile device data from the remote storage device in response to the

transmitted request (paragraph 43); and storing the identified stored mobile device data

in the mobile device memory (paragraph 43).

As to **claim 6**, Vasudevan in view of O'Neill teaches everything as applied in

claims 1 and 4-5 and Vasudevan also discloses: the remote storage device comprises

the update management computing device (paragraph 54).

As to **claim 16**, Vasudevan in view of O'Neill teaches everything as applied in

claim 1. Vasudevan in view of O'Neill further teaches wherein updating the mobile

device with the received update data further comprises copy-on-write of stored baseline

configuration data stored into the available memory of the mobile device (**see *O'Neill*,**

p. 2 [0015], p. 4 [0031] and p. 5 [0038-0039]).

As to **claim 17**, Vasudevan in view of O'Neill teaches everything as applied in

claim 1 and Vasudevan also discloses: Executable program code stored in a computer

readable medium and comprising instructions operable to cause a mobile device to

perform the method of claim 1 when executed on the mobile device (paragraph 47).

As to **claim 48**, Vasudevan discloses: A mobile device having a baseline

configuration stored in a mobile device memory **(110) (paragraph 2)**, comprising:

means for receiving resource requirements data for an update from an update

management computing device, the resource requirements data including a memory

size of update data associated with the update **(paragraph 42 – It is inherent that the**

mobile device must posses a transceiver in order to communicate with the

server); means **(LRM)** for determining whether the mobile device has a minimum

amount of available memory in the mobile device memory to store the update data by

comparing the memory size of the update data to the minimum amount of available memory in the mobile device memory **(paragraph 42)**; means **(LRM)**, responsive to the mobile device not having the minimum amount of available memory in the mobile device memory to store the update data, for identifying stored mobile device data stored in the mobile device memory that may be purged to make available the minimum amount of available memory in the mobile device memory **(paragraph 42)**; means for transmitting from to the update management computing device update request data requesting update data **(paragraph 47 - It is inherent that the mobile device must posses a transceiver in order to communicate with the server)**; means for receiving at the mobile device the update data from the update management computing device in response to the transmitted update request data **(paragraph 47 - It is inherent that the mobile device must posses a transceiver in order to communicate with the . server)**.

However, Vasudevan fails to disclose means for updating the mobile device with the received update data by: creating an updated mobile device configuration within the available memory of the mobile device memory; and maintaining the baseline mobile device configuration within the mobile device memory after creating the updated mobile device configuration within the available memory of the mobile device memory, wherein the baseline mobile device configuration is maintained within the mobile device memory for a period of time sufficient to allow the updated mobile device configuration to be tested. However, the Examiner contends this feature is very well known in the art as taught for example by O'Neill.

In an analogous field of endeavor, O'Neill teaches a method of conducting over-the-air (OTA) updates to firmware and software on a mobile device, comprising: updating the mobile device with the received update data by: creating an updated mobile device configuration within the available memory of the mobile device memory; and maintaining the baseline mobile device configuration within the mobile device memory after creating the updated mobile device configuration within the available memory of the mobile device memory, wherein the baseline mobile device configuration is maintained within the mobile device memory for a period of time sufficient to allow the updated mobile device configuration to be tested (see p. 4 [0031] and p. 5 [0038-0039]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Vasudevan with the teachings of O'Neill to include a mobile device, comprising: means for updating the mobile device with the received update data by: creating an updated mobile device configuration within the available memory of the mobile device memory; and maintaining the baseline mobile device configuration within the mobile device memory after creating the updated mobile device configuration within the available memory of the mobile device memory, wherein the baseline mobile device configuration is maintained within the mobile device memory for a period of time sufficient to allow the updated mobile device configuration to be tested, in order to update an updateable mobile device from a current code version to a latest updated code version, and verifying at the mobile device, to determine whether it received an appropriate update package before applying the update package to the

existing version of firmware and/or software in the mobile device as per the teachings of O'Neill **(see p. 2 [0012], p. 4 [0031] and p. 5 [0039])**.

As to **claim 49**, Vasudevan in view of O'Neill teaches everything as applied in claim 48 and Vasudevan also discloses: means **(LRM)**, responsive identifying stored mobile device data stored in the mobile device memory that may be purged to make available the minimum amount of available memory in the mobile device memory (paragraph 47), for determining whether the identified stored mobile device data is stored on a remote storage device operable to communicate with the mobile device over a communication network (paragraph 47); means **(LRM)**, response to determining that the identified stored mobile device data is not stored on the remote storage device, transmitting the identified stored mobile device data to the remote storage device for storage (paragraph 47), and for purging the identified stored mobile device data from the mobile device memory (paragraph 47).

As to **claim 50**, Vasudevan in view of O'Neill teaches everything as applied in claims 48-49 and Vasudevan also discloses: means for transmitting a request from the mobile device to the remote storage device for transmission of the identified stored mobile device data from the remote storage device to the mobile device (paragraph 43); means for receiving the identified stored mobile device data from the remote storage device in response to the transmitted request (paragraph 43); and means for storing the identified stored mobile device data in the mobile device memory (paragraph 43).

5.   Claims 8, 9, 51, 52 and 54 and 55 are rejected under 35 U.S.C. 103(a) as being

unpatentable over **Vasudevan, U.S. Publication Number 20040192282 A1**

(hereinafter Vasudevan) and **O'Neill et al., U.S. Publication Number 2007/0169073**

A1 (hereinafter O'Neill) as applied to claims 1, 48 and 53 above, and further in view of

Cheng et al., U.S. Publication Number 2003/0046676 A1 (hereinafter Cheng).

As to **claims 8, 9, 51, 52, 54** and **55**, Vasudevan in view of O'Neill teaches teach

everything as applied in claims 1, 48 and 53 above. Vasudevan in view of O'Neill

further teaches storing an update resource in the mobile device memory, the update

resource specifying the baseline mobile device configuration and updated mobile device

configuration (**see O'Neill, p. 4 [0031] and p. 5 [0038-0039]**).

However, Vasudevan and O'Neill fails to explicitly teach determining whether an

update resource is stored in the mobile device memory during an initialization of the

mobile device; upon determining that the update resource is stored in the mobile device

memory during an initialization of the mobile device, prompting a mobile device user to

select one of the baseline mobile device configuration or updated mobile device

configuration; and accepting the updated mobile device configuration or reverting to the

baseline mobile device configuration based on the user selection.

In an analogous art, Cheng teaches determining whether an update resource is

stored in the mobile device memory during an initialization of the mobile device

(paragraph 61); upon determining that the update resource is stored in the mobile

device memory during an initialization of the mobile device, prompting a mobile device

user to select one of the baseline mobile device configuration or updated mobile

configuration **(paragraph 61)**; and accepting the updated mobile device configuration or reverting to the baseline mobile device configuration based on the user selection **(paragraphs 61, 176).**

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the Vasudevan and O'Neill with the teachings of Cheng, to include a method of determining whether an update resource is stored in the mobile device memory during an initialization of the mobile device; upon determining that the update resource is stored in the mobile device memory during an initialization of the mobile device, prompting a mobile device user to select one of the baseline mobile device configuration or updated mobile device configuration; and accepting the updated mobile device configuration or reverting to the baseline mobile device configuration based on the user selection, in order to enable the user to restore the client computer to its state prior to the installation, including restoring any files that were deleted or altered.

Conclusion

6.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Cheah et al.; U.S. Publication Number 2004/0015939 A1 discloses updateable memory module.

7.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony S. Addy whose telephone number is 571-272-7795. The examiner can normally be reached on Mon-Thur 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duc M. Nguyen can be reached on 571-272-7503. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A.S.A

DUC M. NGUYEN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600